

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA,

Plaintiff

V.

EQUISTAR CHEMICALS, LP

Defendant

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Civil Action No. [_____]

CONSENT DECREE

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WHEREAS Plaintiff United States of America (“the United States”), by the authority of the Attorney General of the United States and through its undersigned counsel, acting on behalf of the United States Environmental Protection Agency (“EPA”), is filing with this Consent Decree a Complaint pursuant to Section 113(b) of the Clean Air Act (“the Act” or “the CAA”), 42 U.S.C. § 7413(b), against Defendant, Equistar Chemicals, LP (“Equistar”), with respect to the Defendant’s facility located in Sulphur, Calcasieu Parish, Louisiana;

WHEREAS the Complaint alleges violations of the New Source Performance Standards (“NSPS”) provisions of Section 111 of the CAA, 42 U.S.C. § 7411, and 40 C.F.R. Part 60, Subparts A, VV, and Kb; and the National Emission Standards for Hazardous Air Pollutants (“NESHAP”) provisions of Section 112 of the CAA, 42 U.S.C. § 7412, and 40 C.F.R. Part 61, Subparts A, J, and V;

WHEREAS Defendant does not admit any liabilities to the United States arising out of the transactions or occurrences alleged in the Complaint; and

WHEREAS the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without adjudication or admission of any issue of fact or law except as provided in Section I, below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Act, 42 U.S.C. § 7413(b), and over the Parties. Venue lies in the District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(c) and 1395(a), because Defendant resides and is located in the judicial district, and the violations alleged in the Complaint are alleged to have occurred in, and Defendant conducts business in, this judicial district. For purposes of this Consent Decree, Defendant does not contest the Court's jurisdiction over this action or over Defendant and does not contest venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 111, 112, and 113 of the Act, 42 U.S.C. §§ 7411, 7412, and 7413.

3. Notice of the commencement of this action has been given to the State of Louisiana, as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendant, its agents, successors, and assigns.

5. At least thirty (30) days prior to a transfer of ownership, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the portions of the proposed written agreement relevant to this Consent Decree by certified mail, to EPA Region 6 and the United States Attorney for the Western District of Louisiana, in accordance with Section XIV of this Decree (Notices).

6. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provisions of this Consent Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

7. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act, shall have the meaning assigned to them in the Act and such regulations. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Complaint" shall mean the Complaint filed by the United States in this action;

b. "Consent Decree" or "Decree" shall mean this Consent Decree, including its Appendix A;

c. "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day;

d. "Defendant" shall mean Equistar Chemicals, LP;

e. "Effective Date" shall mean the date of entry of this Consent Decree

by the Court after satisfaction of the public notice and comment procedures set forth in Section XIX of this Consent Decree;

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States;

g. "Facility" shall mean Defendant's Lake Charles Plant located in Sulphur, Louisiana;

h. "Paragraphs" shall mean a portion of this Consent Decree identified by an Arabic numeral;

i. "Parties" shall mean the United States and Defendant;

j. "Section" shall mean a portion of this Consent Decree identified by a roman numeral;

k. "State" shall mean the State of Louisiana; and

l. "United States" shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

9. Within thirty (30) days after the Effective Date of this Consent Decree, Defendant shall pay the sum of **ONE HUNDRED THOUSAND DOLLARS (\$100,000)** as a civil penalty to the United States. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be provided to Defendant following lodging of the Consent Decree by the Financial Litigation Unit of the U.S. Attorney's Office ("USAO") for the Western District of Louisiana. At the time of the payment, Defendant shall simultaneously send written notice of the payment and a copy of any transmittal documentation (which should

reference USAO file number 2003V00858 and DOJ case number 90-5-2-1-08012) to the United States in accordance with Section XIV of this Consent Decree (Notices). Should Defendant fail to pay civil penalties in accordance with the terms of this Consent Decree, the United States shall be entitled to collect the interest on such penalties, as provided for in 28 U.S.C. § 1961, together with costs (including attorneys fees) incurred in any action necessary to collect any such civil penalties or interest thereon.

10. Defendant shall not deduct the civil penalty paid under this Section in calculating its federal income tax.

V. SUPPLEMENTAL ENVIRONMENTAL PROJECT

11. Defendant shall implement a Supplemental Environmental Project (“SEP”) called the “Bus Project” in the geographic area of Lake Charles, where the Plant is located and in accordance with all provisions in Appendix A to this Consent Decree, which is attached hereto and incorporated into this Consent Decree by reference. The SEP shall be fully completed within one (1) year after entry of this Consent Decree. The SEP will replace two (2) older school buses with two (2) new school buses. The new buses will reduce NO_x, particulates, and other airborne pollutants. In implementing the SEP, Defendant shall spend not less than \$95,000.

12. Defendant is responsible for the satisfactory completion of the SEP in accordance with requirements of this Consent Decree. Satisfactory completion means that Defendant shall complete the work in accordance with Appendix A, attached hereto, shall minimize the cost per unit of pollution reduced from the school bus fleets identified in Paragraph 11, and shall not spend less than the amount set forth in Paragraph 11,

above. The Defendant may use contractors and/or consultants in planning and implementing the SEP.

13. With regard to the SEP, Defendant certifies the truth and accuracy of each of the following:

a. That all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate and represents a fair estimate of the costs necessary to implement the SEP;

b. That, as of the date of this Consent Decree, Defendant is not required to perform or develop the SEP by any federal, state, or local law or regulation, nor is Defendant required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. That the SEP is not a project that Defendant was planning or intending to perform, or implement other than in settlement of the claims resolved in this Consent Decree;

d. That the Defendant has not received, and is not negotiating to receive credit for the SEP in any other enforcement action; and

e. That Defendant will not receive any reimbursement for any portion of the SEP from any other person.

14. SEP Completion Report

a. Within one year after the effective date of this Consent Decree, Defendant shall submit a SEP Completion Report to the United States in accordance with Section XIV of this Consent Decree (Notices). The SEP Completion Report shall contain the following information:

- i. A detailed description of the SEP as implemented;
- ii. A description of any problems encountered in completing the SEP and the solutions thereto;
- iii. An itemized list of all SEP costs and acceptable evidence of such costs;
- iv. Certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and
- v. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

15. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to determine the adequacy of the SEP completion or eligibility of the SEP costs.

16. Defendant bears the burden of clearly segregating eligible SEP costs from other costs not eligible for SEP credit. Any non-segregable cost evidence that contains both eligible and non-eligible SEP cost items shall be disallowed in its entirety. For purposes of Paragraph 14.a.iii, “acceptable evidence” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods or services for which payment is made. Canceled drafts do not constitute acceptable evidence unless such drafts specifically identify and itemize the individual costs of the goods or services for which payment is made.

17. After receipt of the SEP Completion Report, the United States shall notify

Defendant whether or not Defendant has satisfactorily completed the SEP. If the SEP has not been satisfactorily completed, or if the amount expended on performance of the SEP is less than the amount set forth in Paragraph 11, above, stipulated penalties may be assessed under Section VIII of this Consent Decree. Disputes concerning the satisfactory completion of the SEP and the amount of eligible SEP costs may be resolved under Section X of this Decree (Dispute Resolution). No other dispute arising under this Section shall be subject to Dispute Resolution.

18. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 25, below.

19. Any public statement, oral or written, in print, film, or other media, made by Defendant making reference to the SEP under this Consent Decree shall include the following language, "This project was undertaken in connection with settlement of an enforcement action, United States v. Equistar Chemicals, LP, taken on behalf of the U.S. Environmental Protection Agency under the Clean Air Act."

VI. COMPLIANCE REQUIREMENTS

20. Defendant hereby acknowledges that Tank V-410 in the Ethylene-Propylene Unit (the "Unit") is subject to Subpart Kb and Subpart A of 40 C.F.R. Part 60, including without limitation, 40 C.F.R. Section 60.113b(d), which makes the requirements of 40 C.F.R. Section 60.18 applicable to Flare 009. Within sixty (60) days after the Unit is restarted and achieves the maximum production rate at which it will be operated, but not later than one hundred and eighty (180) days after the initial restart of the Unit, Defendant shall conduct a performance test of Flare 009 demonstrating its

compliance with the parameters in 40 C.F.R. §§ 60.18(f)(1) through 60.18(f)(6) and shall submit a written report containing the performance test results to EPA and the State in accordance with Section VII (Reporting Requirements) and Section XIV (Notices) of the Consent Decree.

21. Within sixty (60) days after the Unit is restarted and achieves the maximum production rate at which it will be operated, but not later than one hundred and eighty (180) days after the initial restart of the Unit, Defendant shall conduct a performance test of Flare 008 demonstrating its compliance with the parameters in 40 C.F.R. Section 60.18(f)(1) through 60.18(f)(6). Within thirty (30) days after completion of the test, Defendant shall submit a written report containing the performance test results to EPA and the State in accordance with Section VII (Reporting Requirements) and Section XIV (Notices) of the Consent Decree.

22. Within ninety (90) days after EPA's receipt of the reports required by this Section, EPA will notify Defendant in writing whether additional testing is required to demonstrate compliance with the parameters in 40 C.F.R. Section 60.18(f)(1) through 60.18(f)(6). If EPA determines that additional testing is required, Defendant shall, within thirty (30) days of receipt of EPA's notice, submit to EPA for review and approval a schedule for the additional testing.

VII. REPORTING REQUIREMENTS

23. Defendant shall provide notification of the restart of the Ethylene-Propylene Unit at least sixty (60) days prior to the restart, and shall provide notification of its intent to perform the testing required in Section VI of this Consent Decree (Compliance Requirements) no later than thirty (30) days before the testing date.

24. All reports shall be submitted to the persons designated in Section XIV of this Consent Decree (Notices).

25. Each report submitted by Defendant under this Section shall be signed by an official of the submitting party and include the following certifications:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my inquiry of those individuals immediately responsible for obtaining the information that I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing and willful submission of any materially false statement.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

26. Defendant shall retain all underlying documents from which it has compiled any report or other submission required by the Section VI of this Consent Decree as is until five years after Defendant complies with Section VI of this Consent Decree or five years after the effective date of this Consent Decree, whichever is longer.

27. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the Act or implementing regulations, or by other federal, state, or local law, regulation, or requirement.

28. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VIII. STIPULATED PENALTIES

29. Defendant shall be liable for stipulated penalties in the amounts set forth in this Section to the United States for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure). A violation includes failure to perform any obligation required by the terms of this Consent Decree, in accordance with all applicable requirements of this Consent Decree, and within the specified time schedules established by and approved under this Consent Decree. The following stipulated penalties shall accrue per violation per day for each violation of this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1 st through 14 th day
\$2,000	15 th through 30 th day
\$3,000	31 st day and beyond

30. Stipulated Penalties shall be paid in accordance with Section VIII, Paragraph 36, below. All transmittal correspondence shall state that such payment is for Stipulated Penalties for noncompliance, as applicable, with this Consent Decree and shall include the identifying information set forth in Paragraph 36, below.

31. SEP Compliance. If Defendant has spent less than the amount set forth in Paragraph 11, above, Defendant shall pay a stipulated penalty equal to the differences between the amount of total eligible SEP costs incurred by Defendant and the amount set forth in Paragraph 11, above.

32. If Defendant has completed the SEP, but the SEP is not satisfactory, Defendant shall pay \$5,000 in addition to any penalty under Paragraph 29, above.

33. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

34. Subject to the provisions of Paragraph 31 and 32, above (concerning stipulated penalties for violation of SEP provisions of this Consent Decree), and notwithstanding the date of any demand for such penalties, all stipulated penalties shall begin to accrue on the day after the performance is due, or the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously each for separate violation of this Consent Decree. Defendant shall pay any stipulated penalty within fifteen (15) days of receiving the United States written demand.

35. Penalties shall continue to accrue as provided in accordance with Paragraph 34 during any dispute resolution, with interest on accrued penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, accrued penalties determined to be owing, together with accrued interest, shall be paid to the United States within thirty (30) days of the effective date of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall, within sixty (60) days of receipt of the Court's decision or order, pay accrued penalties determined by the Court to be owing, together with accrued interest, except as provided in Subparagraph c, below; and

c. If the District Court's decision is appealed by any Party, Defendant

shall, within thirty (30) days of receipt of the final appellate court decision, pay all accrued penalties determined to be owing to the United States, together with accrued interest.

36. Stipulated penalties owing to the United States shall, as directed by the United States, be paid by EFT or by certified or cashier's check in the amount due payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-2-1-08012 and United States Attorney's Office file number 2003V00858, and delivered to the Office of the United States Attorney, Western District of Louisiana, Financial Litigation unit, 300 Fannin Street, Suite 3201, Shreveport, Louisiana 71101-3068.

37. Should Defendant fail to pay stipulated penalties in accordance with the terms of this Consent Decree, the United States shall be entitled to collect interest on such penalties, as provided for in 28 U.S.C. § 1961, together with the costs (including attorneys fees) incurred in any action necessary to collect any such stipulated penalties or interest thereon.

38. Subject to the provisions of Section XII of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States by reason of Defendant's failure to comply with any requirements of this Consent Decree or applicable law, except that for any violation of the Act, regulations or Permit for which this Consent Decree also provides for payment of a stipulated penalty, Defendant shall be allowed a credit for stipulated penalties paid against any statutory penalties imposed for such violation.

IX. FORCE MAJEURE

39. A "Force Majeure Event," is any event beyond the control of Defendant, its contractors, or any entity controlled by Defendant that delays the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. "Best efforts" include anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure Event" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

40. Defendant shall provide notice orally or by electronic or facsimile transmission as soon as possible, but no later than five (5) business days after the time Defendant first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. Defendant shall also provide written notice, as provided in Section XIV of this Consent Decree (Notices), within ten (10) days of the time Defendant first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); Defendant's past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Defendant's rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph shall preclude Defendant from asserting any claim of force majeure.

41. If the United States agrees that a force majeure event has occurred, the United States may agree to extend the time for Defendant to perform the affected requirements for the time necessary to complete those obligations. An extension of time

to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States agrees to an extension of time, the appropriate modification shall be made pursuant to Section XVII of this Consent Decree (Modification).

42. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Defendant, the United States' position shall be binding, unless Defendant invokes Dispute Resolution under Section X of this Consent Decree. In any such dispute, Defendant bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that Defendant gave the notice required by this Section; that the force majeure event caused any delay Defendant claims was attributable to that event; and that Defendant exercised best efforts to prevent or minimize any delay caused by the event.

X. DISPUTE RESOLUTION

43. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, such procedures shall not apply to actions by the United States to enforce obligations of the Defendant that have not been disputed in accordance with this Section.

44. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty-five (35) days from the date the

dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within fourteen (14) days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedure as set forth below.

45. Formal Dispute Resolution.

a. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the proceeding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting documentation relied upon by Defendant.

b. The United States shall serve its Statement of Position within sixty (60) days after receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

c. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within twenty (20) days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written

statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

d. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

e. In any dispute under this Paragraph, Defendant shall bear the burden of demonstrating that its position clearly complies with this Consent Decree and the CAA and that Defendant is entitled to relief under applicable law.

46. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in this Section. If the Defendant does not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

47. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry to the Facility at all reasonable times, upon presentation of credentials to:

- a. Monitor the progress of activities required under this Consent Decree;
- b. Verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. Obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
- d. Obtain documentary evidence, including photographs and similar data; and
- e. Assess Defendant's compliance with this Consent Decree.

48. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable federal or state laws, or permits.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

49. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action and the violations set forth in the Notice of Violations, dated August 7, 2003.

50. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated herein. This Consent Decree shall not be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the Act, or under other federal or state laws, regulations, or permit conditions, except as expressly specified herein.

51. This Consent Decree is not a Permit, or a modification of any permit, under any federal, state, or local laws or regulations. Defendant is responsible for

achieving and maintaining complete compliance with all applicable federal, state and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to said laws, regulations, or permits. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CAA, 42 U.S.C. § 7401 *et seq.*

52. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

53. This Consent Decree shall not be construed to create rights, or grant any cause of action to, any third party not party to this Consent Decree.

54. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated herein.

XIII. COSTS

55. The Parties shall each bear their own costs of litigation of this action, including attorney fees, except as provided in Paragraphs 9 and 37, above.

XIV. NOTICES

56. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resource Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-08012

As to EPA Region 6:

Director, Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency
Region VI
1445 Ross Ave.
Mail Code (6EN)
Dallas, Texas 75202
Attention: Raymond Magyar
and

Deputy Regional Counsel, Enforcement
U.S. Environmental Protection Agency
1445 Ross Ave.
Dallas, Texas 75202

As to Louisiana Department of Environmental Quality:

Harold Leggett, Assistant Secretary
Louisiana Department of Environmental Quality
Office of Environmental Compliance
P.O. Box 4312
Baton Rouge, Louisiana 70821-4312
and

David Daigle, Regional Manager
Louisiana Department of Environmental Quality
Southwest Regional Office
1301 Gadwall Street
Lake Charles, Louisiana 70615

As to Equistar Chemical, LP:

Steven D. Cook
Senior Corporate Counsel
Equistar Chemicals, LP
One Houston Center, Suite 1600

1211 McKinney St.
Houston, Texas 77254-3646

57. Any Party may, by written notices to the other Parties, change its designated notice recipient or notice address provided above.

58. Notices submitted pursuant to this Section shall be deemed effective upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

59. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XVI. RETENTION OF JURISDICTION

60. The Court shall retain jurisdiction over this case until termination of this Consent decree, for purpose of resolving disputes arising under this Consent Decree or entering orders modifying this Consent Decree, pursuant to Sections X and XVI, or effectuating or enforcing compliance with the terms of this Consent Decree.

XVII. MODIFICATION

61. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Consent Decree, it shall be effective only upon approval by the Court.

XVIII. TERMINATION

62. This Consent Decree will terminate after: (1) Defendant has paid the civil penalty, submitted the SEP Completion Report, paid any accrued stipulated penalties required by this Consent Decree; (2) Defendant has submitted the flare performance

results required by this Consent Decree, or five years have elapsed after the effected date of this Consent Decree and Defendant has not yet restarted the Ethylene-Propylene Unit; (3) Defendant makes a request in writing to the United States, in accordance with Section XIV of this Consent Decree (Notices), to terminate this Consent Decree; and (4) the United States has not notified Defendant in writing within 90 (ninety) days of Defendants request that it believes Defendant has failed to comply with one or more of the requirements of the Consent Decree.

63. If the United States so notifies the Defendant, then this Consent Decree will terminate upon the United States notifying Defendant that Defendant has complied with all of the requirements of this Consent Decree. If the United States notifies Defendant that it does not agree that the Consent Decree may be terminated, Defendant may invoke Dispute Resolution under Section X of this Consent Decree.

XIX. PUBLIC PARTICIPATION

64. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice.

XX. SIGNATORIES/SERVICE

65. Each undersigned representative of Defendant and the Deputy Section Chief of the Environmental Enforcement Section of the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is

fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

66. This Consent Decree may be signed in counterparts and such counterpart signature pages shall be given full force and effect.

67. Defendant hereby agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

68. Defendant hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXI. INTEGRATION

69. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supercedes all prior agreements and understandings, whether oral or written. No other document, nor any representation, inducement, agreements, understanding, or promise constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXII. FINAL JUDGMENT

70. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the United States and Defendant.

XXIII. APPENDIX

71. Appendix A is attached to and incorporated into this Consent Decree.

Dated and entered this _____ day of _____, 2004

UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF LOUISIANA

FOR THE UNITED STATES OF AMERICA:

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Assistant Attorney General
Environment and Natural Resources
Division

Catherine R. McCabe, Deputy Section Chief
Environmental Enforcement Section
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JAMES W. BAYER
Senior Vice President, Manufacturing
Equistar Chemicals, LP
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APPENDIX A

The Purchase of 2 (two) New School Buses for the Calcasieu Parish School System

The
understanding
does not
appear
on the
final copy
that EPA
Res C has.

A. PROJECT'S OVERVIEW

Equistar shall perform a Supplemental Environmental Project ("SEP") in connection with the settlement of certain alleged violations of the Clean Air Act.

Equistar will apply \$95,000, (the "SEP Expenditure") to the SEP. Equistar will apply the SEP Expenditure toward the purchase of 2 (two) new school buses to replace existing older diesel school buses. Equistar believes that this project is an effective way to reduce air pollution because the older buses being replaced were manufactured at a time when there were limited emission and safety standards. The use of low sulfur diesel fuel was also evaluated but is currently unavailable in Lake Charles and Calcasieu Parish. Replacing these older buses with newer buses that meet more stringent emission and safety standards will significantly reduce both NOx and PM, even without using low sulfur diesel fuel. The mission of the project is to improve air quality and reduce children's exposure to the harmful effects of diesel exhausts that are emitted by school buses.

Equistar contracted with the Calcasieu Parish School System ("CPSS") to procure 2 (two) new school buses to accomplish the mission of the project. Under the Consent Decree, Equistar has agreed not to claim a tax deduction for the SEP Expenditure.

This project is expected to have the following benefits:

1. Benefits to the Public or Environment – The project will address two issues in the Lake Charles area – air quality and the effects of the exposure from diesel exhaust emissions on children's health. The SEP will support the efforts of the Louisiana Department of Environmental Quality ("LDEQ") to implement increased air quality controls in the Lake Charles and Calcasieu Parish areas and prevent deterioration of air quality. Replacing older buses with new buses will result in a significant reduction in particulate matter, NOx, and other pollutants. This project will have a significant beneficial impact on both air quality and children's health in the area.
2. Innovativeness – School buses that are more than a decade old predate current air pollution standards. These buses emit significantly more particulate matter (PM) and NOx than late model school buses. Under the project, older school buses will be replaced with new buses that meet current air pollution standards or are equipped with advanced-technology engines.
3. Environmental Justice – The project will benefit school children and adults in all socio-economic groups in the Lake Charles area, but will perhaps have the most impact on children in minority and low income populations of the area, who tend to rely on school buses as their primary means of transportation to and from school. Calcasieu Parish and Lake Charles have significant minority and economically stressed populations.
4. Community Input – Equistar discussed the program with the school district in the Lake Charles area and the school district is very interested in participating in the project. The school district agrees that the purchase of new school buses for the

area would be environmentally beneficial because the current buses are 1981 models. Similar programs have been widely supported by independent school districts in other areas.

5. Multimedia Impacts – The most direct impact will be the reduction of toxic air emissions to which school children are directly exposed. It is expected that replacing the old buses will result in a reduction in particulate matter, NOx, and other pollutants.

6. Pollution Prevention – The mission of the project is the reduction of air pollution from older diesel-powered engines. Replacement of older school buses will be a source reduction, which is an efficient method of pollution prevention. The exhaust emissions in diesel are a mixture of many constituents, which contribute to ambient concentrations of several criteria air pollutants including nitrogen oxides (NOx), sulfur oxides, and fine particles as well as other toxic air pollutants. The replacement of these older diesel-powered buses with newer cleaner burning buses will prevent NOx, particulate matter, and other pollutants from being emitted in the Lake Charles area.

B. PROGRAM'S SCHEDULE

All deadlines described below as "days" are to be interpreted as "calendar days."

Within thirty (30) days after the completion of each of these milestones, Equistar shall provide EPA with copies of the documents that evidence the completion of such milestones.

Within thirty (30) days of the completion of all these milestones, Equistar shall provide EPA with a SEP completion report containing detailed description of the project as implemented and a certification that the project has been fully implemented pursuant to the Consent Decree.

In addition to the above-mentioned document submittals, Equistar shall provide EPA with interim progress reports every sixty (60) days.

The foregoing schedule shall be extended where good cause is shown and whereby all parties to this Consent Decree mutually agree.

The schedule for completion of the project milestones shall be as follows:

Milestone #1: Equistar shall deliver a cashier's check of \$95,000, plus accrued interest to its contractor, CPSS, or its lawful designee, within (60) days of the entry of the Consent Decree for SEP expenditure.

Milestone #2: Equistar shall ensure that within 60 (sixty) days of the date of the payment that an order is placed for the purchase of the 2 (two) new school buses.

Milestone #3: Equistar shall ensure that within two hundred and forty (240) days of the date of the payment that the 2 (two) new buses are delivered to the school district and meet the requirements of this SEP agreement.